

No. 07-3653

FILED
JAMES BONINI
CLERKUNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

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1:01-CV-185-HJW

FEB 08 2008

LEONARD GREEN, Clerk

In re: DANA GOINS,

Movant.

ORDER

A TRUE COPY

Attest:

LEONARD GREEN, Clerk

By *Andrea Polard*
Deputy Clerk

Before: MARTIN and SUTTON, Circuit Judges; OBERDORFER, District Judge.*

Dana Goins moves this court for an order authorizing the district court to consider a second or successive application for a writ of habeas corpus pursuant to 28 U.S.C. § 2244. Ohio has responded in opposition to the motion.

In 1999, Goins pleaded guilty to charges of corruption of a minor, bribery, compelling prostitution, and use of a minor in nudity oriented material and was sentenced to fifteen years of imprisonment. Goins did not file a direct appeal, but filed motions for judicial release, to vacate his sentence, and for delayed appeals, all of which were unsuccessful. In 2001, Goins filed this petition for federal habeas corpus relief, arguing that he had received ineffective assistance of counsel, his plea was involuntary, he was subject to an illegal search, his arrest was unlawful, and he was denied the right to appeal. The district court dismissed the petition as barred by the statute of limitations, and both the district court and this court denied Goins a certificate of appealability. In 2004, the district court denied Goins's motion to reopen his initial habeas corpus action. The district court rejected Goins's contention that an intervening change of law warranted reconsideration of the

*The Honorable Louis F. Oberdorfer, United States District Judge for the District of Columbia, sitting by designation.

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timeliness of his petition, and this court affirmed the district court's judgment. *Goins v. Saunders*, 206 F. App'x 497 (6th Cir. 2006), *cert. denied*, 127 S. Ct. 3010 (2007).

Here, Goins seeks an order authorizing another habeas application, and again asserts that new precedent warrants reconsideration of the timeliness of his first habeas corpus petition. Generally, Goins may not assert a claim in a second or successive habeas petition under 28 U.S.C. § 2254 unless he first makes a prima facie showing before this court that the claim: (1) "relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable"; or (2) relies on new evidence of innocence that could not have been discovered earlier, and which "if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." *See* 28 U.S.C. § 2244(b)(2)(A) & (B). Goins cites no claim that falls within either category cognizable under § 2244. Goins cites no new rule of constitutional law made retroactive to cases on collateral review by the Supreme Court; rather, Goins contends that new precedent from this court might warrant relief from the dismissal of his initial habeas corpus petition. This contention, even if established, cannot support authorization of a second or successive habeas petition under 28 U.S.C. § 2244(b)(2)(A) & (B). Therefore, Goins's motion must be denied.

For the foregoing reasons, the motion for an order authorizing the district court to consider a second or successive habeas corpus petition is denied.

ENTERED BY ORDER OF THE COURT


Clerk

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Leonard Green
Clerk

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Filed: February 08, 2008

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Cincinnati, OH 45202-0000

Re: No. 07-3653, *In Re: Dana Goins*
Originating Case No. 01-00185

Dear Counsel,

The Court issued the enclosed Order today in this appeal.

Sincerely yours,

s/Florence P. Ebert
Case Manager
Direct Dial No. 513-564-7026
Fax No. 513-564-7098
CA06-Team2@ca6.uscourts.gov

cc: Mr. James Bonini
Honorable Herman J. Weber

Enclosure

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JAMES BONINI
CLERK

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